

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 ARJAY CARAANG,

13 Defendant.

14 CASE NO. CR17-0097-JCC

ORDER

15 This matter comes before the Court on Defendant's motion to suppress (Dkt. No. 32) and  
16 the Government's motion to seal (Dkt. No. 41). Having thoroughly considered the parties'  
17 briefing and the relevant record, the Court finds that neither an evidentiary hearing nor oral  
18 argument is necessary<sup>1</sup> and hereby DENIES Defendant's motion to suppress (Dkt. No. 32) and  
19 GRANTS in part and DENIES in part the Government's motion to seal (Dkt. No. 41) for the  
20 reasons explained herein.

21 **I. BACKGROUND**

22 On September 24, 2016, at approximately 1:46 a.m., an employee at the Cloud Nine  
23 Tavern ("Cloud Nine") called 911 to report an incident involving a customer with a gun. (Dkt.

24  
25 <sup>1</sup> An evidentiary hearing is required "only when . . . contested issues of fact exist." *United*  
26 *States v. Howell*, 231 F.3d 615, 620 (9th Cir. 2000). Here, the parties rely on the same  
documentary evidence to support their positions, and neither side has demonstrated with  
specificity that contested issues of fact exist.

1 No. 30-1 at 2.) Over the next five minutes, the employee provided the following information to  
2 the dispatcher who relayed it to police officers responding to the scene:<sup>2</sup>

3 01:46 – A customer was in the Cloud Nine parking lot waving a gun around.

4 01:47 – The subject was standing next to a silver Toyota Camry with license plate  
5 number ABV-6818.

6 01:48 – The subject was described as a male, Pacific Islander in his early 20s,  
7 about 5'6", with long black hair, wearing a Seahawks hat and clothing. He had  
possibly been drinking, and was last seen holding a silver pistol in his right hand.

8 01:49 – The subject was with 5 to 10 others in the parking lot, listening to loud  
9 music and possibly arguing. The reporting party heard the pistol make a "click"  
sound, which he believed was a round being chambered.

10 01:50 – The Toyota associated with the subject began reversing in the parking lot,  
11 and was last seen possibly pulling out northbound from Cloud Nine.

12 (Id. at 2-3.)

13 The reporting party gave his name and phone number before hanging up. (Id. at 3.) Kent  
14 police Officers Rausch and Hale drove to Cloud Nine to identify potential victims and witnesses,  
15 while Officers Prusa and Steiner pursued the Toyota. (Id.) As Officer Prusa arrived at Cloud  
16 Nine, she saw a silver Toyota Camry with license plate ABV-6818 leaving the parking lot. (Dkt.  
17 No. 43-3 at 5.) The CAD log contains the following entries about what happened next:

18 01:52 – Officer Prusa pulled the Toyota over a few blocks from Cloud Nine.

19 01:55 – Officer Rausch reported that there was "No PC, No Victim."

20 01:56 – Officer Hale reported that a bouncer at the Tavern, different from the  
21 original 911 caller, told him that he saw the suspect rack the slide on a chrome  
22 handgun and yell "anybody want some?"

23 01:57 – Officers Prusa, Steiner, and others performed a felony stop of the Toyota.

24 (Dkt. No. 30-1 at 3.)

25 <sup>2</sup> The dispatcher provided the officers with the information via a Computer Aided  
26 Dispatch Program (CAD). A record of these dispatches is memorialized in what is known as a  
CAD log, which lists each entry using a time stamp.

1           Officer Prusa noted that the driver of the Camry, later identified as Defendant Arjay  
2 Caraang, appeared to be a Pacific Islander male, in his early 20s, with long black hair in a  
3 ponytail, wearing a Seahawks hat and jersey. (Dkt. No. 43-3 at 5–6.) Officer Prusa told the  
4 occupants of the Toyota that they were being detained while she investigated a report of  
5 unlawful display of a weapon at Cloud Nine. (*Id.* at 6.) The occupants denied having a gun or  
6 being involved with the incident at the tavern. (*Id.*) Officer Prusa asked Caraang for his consent  
7 to search the car, and told him if he withheld consent she would obtain a search warrant. (*Id.*)

8           At the same time as Officer Prusa was talking to Caraang, Officer Steiner learned from  
9 the officers at Cloud Nine that “they were unable to establish probable cause for a crime as they  
10 had not yet located a victim.” (*Id.* at 8.) Thinking the occupants of the Toyota would soon be  
11 released, Officer Steiner conducted a frisk of the car’s interior. (*Id.*) He looked underneath the  
12 passenger seat and saw what looked like a silver handgun. (*Id.*)

13           Officer Hale brought the bouncer from Cloud Nine to where Caraang was detained to  
14 perform an identification. (*Id.* at 9.) The bouncer told the Officer that he was “100%” certain  
15 Caraang was the customer with the gun. (*Id.*) Officer Prusa ran Caraang’s name through her in-  
16 car computer and learned that he had four prior felony convictions. (*Id.* at 6.) Officer Prusa  
17 arrested Caraang for felon in possession of a firearm. (*Id.*) Officer Prusa later obtained a search  
18 warrant and recovered a loaded silver .380 Jimenez Arms pistol from underneath the front  
19 passenger seat. (*Id.* at 3, 5.) Caraang was ultimately indicted on one count of felon in possession  
20 of a firearm and one count of felon in possession of ammunition. (Dkt. No. 1 at 1–2.)

21 **II. DISCUSSION**

22           Caraang asks the Court to suppress evidence of the handgun and ammunition taken from  
23 his car because the police lacked reasonable suspicion to detain him, Officer Steiner conducted  
24 an unlawful search of the car, and Caraang never consented to a search. (*See generally* Dkt. No.  
25 34.) The Government counters that the police had reasonable suspicion that someone in the car  
26

1 had committed a crime, Officer Steiner conducted a permissible frisk of the car based on officer  
2 safety concerns, and Caraang gave Officer Prusa consent to search the car. (Dkt. No. 34 at 5–6.)

3       **A. Seizure of Car and *Terry* Stop**

4 Caraang argues that the police lacked reasonable suspicion to stop his vehicle for two  
5 reasons. First, Caraang asserts that the police relied on a 911 caller’s report of a person in  
6 possession of a gun, which does not provide sufficient suspicion to conduct a *Terry* stop. (Dkt.  
7 No. 32 at 5–6) (citing *Fla. v. J.L.*, 529 U.S. 266, 268 (2000)). Second, Caraang asserts that if the  
8 police had reasonable suspicion, it was only with regard to a completed misdemeanor—unlawful  
9 display of a weapon—which does not justify the use of intrusive felony stop procedures. (*Id.* at  
10 8–9) (citing *United States v. Grigg*, 498 F.3d 1070, 1077 (9th Cir. 2007)). Alternatively, Caraang  
11 argues that the police’s felony stop procedures transformed his detention into an arrest lacking  
12 probable cause. (Dkt. No. 45 at 4–5.)

13       1. Reasonable Suspicion Based on 911 Call.

14       Consistent with the Fourth Amendment’s prohibition against warrantless seizures, “police  
15 can stop and briefly detain a person for investigative purposes if the officer has a reasonable  
16 suspicion supported by articulable facts that criminal activity ‘may be afoot . . .’” *United States*  
17 *v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)). A police  
18 officer may conduct an investigatory traffic stop where she has “reasonable suspicion that a  
19 particular person has committed, is committing, or is about to commit a crime.” *United States v.*  
20 *Choudhry*, 461 F.3d 1097, 1100 (9th Cir. 2006) (citation and internal quotation marks omitted).  
21 When reviewing the propriety of a *Terry* stop, courts must consider the totality of the  
22 circumstances and determine “whether the detaining officer has a particularized and objective  
23 basis for suspecting legal wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002)  
24 (citation omitted).

25       A telephone tip to police can provide the basis for a *Terry* stop, so long as the tip bears  
26 “sufficient indicia of reliability to provide reasonable suspicion . . .” *United States v. Edwards*,

1 761 F.3d 977, 983 (9th Cir. 2014) (citation omitted). The Supreme Court has emphasized several  
2 relevant factors to consider when determining whether a citizen tip is sufficient to provide  
3 reasonable suspicion that a crime has occurred. *See Navarette v. California*, — U.S. —, 134  
4 S.Ct. 1683, 1687–1690 (2014). These factors include: (1) whether the tipster used 911 to report  
5 information, (2) whether the tipster was an eye-witness to the reported criminal activity, (3)  
6 whether the information was reported contemporaneously with the criminal activity, and (4)  
7 whether the report was of an ongoing or dangerous crime. *Id.*; *see also United States v. Terry–*  
8 *Crespo*, 356 F.3d 1170, 1171 (9th Cir. 2004) (outlining similar factors).

9 Officer Prusa had reasonable suspicion to stop Caraang’s car. First, Cloud Nine  
10 employee’s 911 call possessed sufficient indicia of reliability to support a *Terry* stop. The  
11 employee provided his name, location, and telephone number. (Dkt. No. 30-1 at 2–3.) The  
12 employee was a first-hand witness to the suspected criminal activity, as he reported seeing the  
13 suspect with a gun in his hand and hearing the gun “click,” as if it were being loaded. (*Id.* at 2.)  
14 The employee contemporaneously described what was going on, updating the dispatcher over the  
15 course of several minutes. (*Id.*) Finally, the employee gave a detailed description of the suspect  
16 and the car he was associated with. (*Id.* at 2.) As Officer Prusa arrived on scene, she observed the  
17 same car leaving the parking lot, which corroborated the caller’s report. (Dkt. No. 43-3 at 5.)

18 Second, the conduct reported by the Cloud Nine employee could have represented  
19 criminal activity. Under Washington law, it is a crime “to carry, exhibit, display, or draw any  
20 firearm . . . in a manner, under circumstances, and at a time and place that either manifests an  
21 intent to intimidate another or that warrants alarm for the safety of other persons.” Wash. Rev.  
22 Code § 9.41.270. The employee told the 911 dispatcher that the suspect was waving a gun  
23 around in the parking lot with a group of 5 to 10 people nearby. (Dkt. No. 30-1 at 2–3.) The  
24 employee also reported that the man was possibly arguing with others and that he heard what  
25 sounded like a bullet being chambered. (*Id.* at 2.) Under the totality of the circumstances, Officer  
26 Prusa could have reasonably believed that this conduct represented, at a minimum, the display of

1 a firearm that caused “alarm for the safety of other persons.” Wash. Rev. Code § 9.41.270.

2 These facts are distinguishable from cases that Caraang cites to support his position. In  
3 *Florida v. J.L.*, the Supreme Court held that police lacked reasonable suspicion to detain a man  
4 waiting at a bus stop based solely on an anonymous caller’s tip that described the man and  
5 reported he was carrying a gun. 529 U.S. at 268. The Court reasoned that the anonymous tip was  
6 not sufficiently reliable because it described activity—possession of a gun—that was not  
7 necessarily criminal or dangerous. *Id.* at 268–269. By contrast, the 911 caller in this case  
8 identified himself and reported that the suspect was waving a gun outside of a bar, with others  
9 around. Unlike *J.L.*, the reported activity in this case went well beyond mere possession of a gun,  
10 and provided police with a reasonable articulable suspicion to stop Caraang’s car.

11                   2.        Reasonableness of Felony Stop Procedures.

12                   Caraang next argues that it was unlawful for the police to employ felony stop procedures  
13 because, at most, they were investigating a completed misdemeanor. (Dkt. No. 32 at 7–10.) The  
14 Ninth Circuit has expressly declined to create a *per se* rule that would make *Terry* stops  
15 constitutionally unreasonable when the police are merely investigating a completed  
16 misdemeanor. *Grigg*, 498 F.3d at 1081. “Circumstances may arise where the police have  
17 reasonable suspicion to believe that a person is wanted in connection with a past misdemeanor  
18 that the police may reasonably consider to be a threat to public safety.” *Id.* A reviewing court  
19 “must consider the nature of the misdemeanor offense in question, with particular attention to the  
20 potential for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of  
21 escalation (e.g., disorderly conduct, assault, domestic violence).” *Id.* This public safety  
22 consideration must be balanced against the privacy interests at stake “along with the possibility  
23 that the police may have alternative means to identify the suspect or achieve the investigative  
24 purpose of the stop.” *Id.*

25                   Under the totality of the circumstances, the Court concludes that the police were justified  
26 in conducting a felony stop of Caraang’s car because the information provided by the 911 caller

1 and bouncer raised a sufficient public safety concern, and there was not an alternative means to  
2 achieve the investigative purpose of the stop. Minutes before detaining Caraang, the police had  
3 received reports from two people that a suspect matching Caraang's description had been waving  
4 a gun outside of a bar while surrounded by 5 to 10 other people. (Dkt. No. 30-1 at 2-3.) One of  
5 the witnesses additionally reported that Caraang had racked the slide of the gun and yelled  
6 "anybody want some?" (*Id.* at 3.)

7 Officers Prusa and Steiner could have reasonably believed that the conduct they were  
8 investigating was more than a misdemeanor. The Officers had information that the suspect was  
9 not only brandishing a handgun, but was possibly arguing with others and had yelled a  
10 threatening comment. (*Id.*) Caraang argues that the Officers could not have been investigating a  
11 felony because Officer Hale reported that he had not found victims and did not have "PC." (Dkt.  
12 No. 45 at 7.) However, the question of probable cause has to do with the ability to make an  
13 arrest, not with requisite suspicion needed to conduct a *Terry* stop. *See Alabama v. White*, 496  
14 U.S. 325, 330 (1990) ("Reasonable suspicion is a less demanding standard than probable  
15 cause.") Moreover, this information came just a few minutes before Caraang was detained and  
16 Officer Hale was still at Cloud Nine talking to witnesses. (Dkt. Nos. 30-1 at 2-3, 43-3 at 9.)

17 Even if the Court concluded the police were investigating a misdemeanor, the reported  
18 conduct presented a sufficient threat to public safety to justify an investigatory detention. If the  
19 Officers had not attempted to stop the suspect, there was a reasonable likelihood the dangerous  
20 conduct—brandishing a firearm outside a bar—could have escalated or been repeated, if not at  
21 Cloud Nine then potentially somewhere else. When police respond to an emergency situation  
22 involving a firearm, there is a strong public safety interest to ensure the conduct is not repeated.  
23 That concern is particularly acute under the facts of this case where police responded to the  
24 display of a firearm as part of what appeared to be an argument outside a bar in the middle of the  
25 night. Had the Officers not stopped Caraang's car, there was also a likelihood they would have  
26 been unable to obtain his identity or further investigate the reported crime. Other than a physical

1 description of the customer holding the gun, the witnesses at the bar did not provide any personal  
2 information that would have allowed the Officers to identify Caraang. If the Officers had  
3 allowed the Toyota to leave the scene, they could not have ensured that the incident would not  
4 escalate or be repeated later on that night.

5 Under the totality of the circumstances, the Court concludes that the Officer's use of a  
6 felony stop was reasonable.

7           3.       Terry Stop Versus Arrest.

8           For the first time in his reply brief, Caraang argues that the police's use of felony stop  
9 procedures turned his detention into an arrest, for which there was not probable cause. (Dkt. No.  
10 45 at 4–5.) “The totality of the circumstances determines whether and when an investigatory stop  
11 becomes an arrest.” *Edwards*, 761 F.3d at 981 (citation omitted). Under this analysis, Courts  
12 must weigh “the intrusiveness of the stop, i.e., the aggressiveness of the police methods and how  
13 much the plaintiff's liberty was restricted . . . and the justification for the use of such tactics, i.e.,  
14 whether the officer had sufficient basis to fear for his safety to warrant the intrusiveness of the  
15 action taken.” *Washington v. Lambert*, 98 F.3d 1181, 1185 (9th Cir. 1996) (citations omitted).  
16 “The second inquiry frequently proves determinative.” *United States v. Guzman-Padilla*, 573  
17 F.3d 865, 884 (9th Cir. 2009).

18           It is undisputed that the police officers in this case used intrusive felony stop procedures  
19 to detain Caraang and the other passengers in his car. The officers removed the three occupants  
20 from the Toyota, frisked them, and put them in handcuffs in the back of their patrol cars. (Dkt.  
21 No. 43-3 at 8.) The tactics used to detain Caraang restricted his ability to leave the scene and  
22 went beyond the intrusion normally associated with a *Terry* stop. *See United States v. Bautista*,  
23 684 F.2d 1286, 1289 (9th Cir. 1982) (“[H]andcuffing substantially aggravates the intrusiveness  
24 of an otherwise routine investigatory detention and is not part of a typical *Terry* stop.”).

25           On the other hand, the police officers had a reasonable belief that the car's occupants, and  
26 specifically Caraang, could be armed and dangerous. Before executing the felony stop, the

1 Officers had received reports from two Cloud Nine employees that a suspect associated with the  
2 Toyota had just minutes earlier waved a pistol in the air, chambered a round, and yelled  
3 “anybody want some?” while surrounded by a group of people. (Dkt. No. 30-1 at 3.) In addition,  
4 Caraang matched the description of the suspect provided by the witnesses. (Dkt. No. 43-3 at 8.)  
5 The police officers therefore had reasonable safety concerns that justified their use of felony stop  
6 procedures. The Court’s conclusion is supported by other cases from the Ninth Circuit that have  
7 “permitted the use of intrusive means to effect a stop where the police have information that the  
8 suspect is currently armed or the stop closely follows a violent crime.” *United States v. Miles*,  
9 247 F.3d 1009, 1012 (9th Cir. 2001); *see also Edwards*, 761 F.3d at 982. Under the totality of the  
10 circumstances, the Court concludes that the police officers’ use of felony stop procedures did not  
11 turn an otherwise permissible *Terry* stop into an arrest.

12 **B. Officer Steiner’s Search of the Car**

13 Caraang asserts that even if the Court finds that police had reasonable suspicion to stop  
14 his car, Officer Steiner committed an unconstitutional search when he looked under the  
15 passenger seat and discovered the handgun. (Dkt. No. 32 at 11.) Caraang cites to a Supreme  
16 Court case that prohibits police from searching a suspect’s car incident to arrest when the suspect  
17 is restrained and unable to access the car. (*Id.*) (citing *Arizona v. Gant*, 556 U.S. 332, 351  
18 (2009)). In *Gant*, the Supreme Court limited its holding to searches conducted incident to arrest  
19 and specifically distinguished situations in which law enforcement may search a vehicle during a  
20 *Terry* stop if officer safety is implicated. *Gant*, 556 U.S. at 346 (noting an exception to its  
21 holding that “permits an officer to search a vehicle’s passenger compartment when he has  
22 reasonable suspicion that an individual, whether or not the arrestee, is ‘dangerous’ and might  
23 access the vehicle to ‘gain immediate control of weapons.’”).

24 Given the facts of this case, Caraang’s reliance on *Gant* is misplaced. As the Court has  
25 already ruled, the use of felony stop procedures did not convert Caraang’s detention into an  
26 arrest. Therefore, Officer Steiner did not conduct a search incident to arrest when he looked

1 underneath the passenger seat of the car and the holding in *Gant* does not apply to this situation.

2       The Court concludes that Officer Steiner's conduct was permissible under the Supreme  
3 Court's decision in *Michigan v. Long*. 463 U.S. 1032 (1983). In *Long*, the Supreme Court held  
4 that "the search of the passenger compartment of an automobile, limited to those areas in which a  
5 weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief  
6 based on 'specific and articulable facts which, taken together with the rational inferences from  
7 those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the  
8 suspect may gain immediate control of weapons." *Id.* at 1049.

9       In this case, Officer Steiner had a reasonable belief that Caraang was dangerous and  
10 might gain immediate control of a firearm from inside the car. Officer Steiner knew that two  
11 people had reported that a man matching Caraang's exact description had just minutes earlier  
12 waved a handgun outside of a bar, racked the slide of the gun, and yelled "anybody want some?"  
13 while surrounded by a group of 5 to 10 others. Caraang was also reported to have possibly been  
14 drinking and arguing with people outside the bar. Those facts provided Officer Steiner with a  
15 reasonable and articulable basis to believe Caraang could be dangerous.

16       Moreover, Officer Steiner had a reasonable belief that Caraang might gain immediate  
17 control of a firearm. Although Caraang was detained at the time of the search, Officer Steiner  
18 had reason to believe Caraang would soon be released based on Officer Hale's statement that he  
19 had not identified victims at Cloud Nine and there was no probable cause. (Dkt. Nos. 30-1 at 3,  
20 43-3 at 8.) Officer Steiner stated in his report that "the decision was made to release the detained  
21 subjects from the vehicle." (Dkt. No. 43-3 at 8.) Officer Steiner also knew that the handgun had  
22 not been recovered and that Caraang, along with the other occupants denied any knowledge of  
23 the gun. (*Id.* at 6.) Officer Steiner conducted a minimally intrusive search by looking underneath  
24 the passenger seat—a location in the car where a firearm could be located. Under the totality of  
25 the circumstances, the Court concludes that Officer Steiner conducted a lawful frisk of the car  
26 that did not violate the Fourth Amendment.

1 Having concluded that Officer Steiner's frisk of the car was lawful, the Court need not  
2 consider Caraang's argument that he did not provide consent for the search. (Dkt. No. 32 at 12.)  
3 Based on Officer Steiner's discovery of the gun, the Cloud Nine employee's identification of  
4 Caraang as the person with the gun, and the fact that Caraang was a convicted felon, there was  
5 probable cause to arrest Caraang on suspicion of felon in possession of a firearm. Accordingly,  
6 Caraang's motion to suppress evidence of the handgun and ammunition is DENIED.

7 **C. Motion to Seal**

8 The Government requests that the Court order its response to Caraang's motion to  
9 suppress (Dkt. No. 42) as well as an exhibit to its response (Dkt. No. 42-1) be maintained under  
10 seal. (Dkt. No. 41). The Government asserts that both its response and the exhibit—which is a  
11 copy of a forensic psychological evaluation Caraang previously underwent—contain confidential  
12 information regarding Caraang's mental health condition that should not be disclosed to the  
13 public. (Dkt. No. 41 at 1.) The Court previously granted Caraang's motion to maintain the same  
14 forensic evaluation under seal. (Dkt. No. 36.) Therefore, the Court GRANTS the Government's  
15 motion to seal (Dkt. No. 41) as it relates to the forensic evaluation (Dkt. No. 42-1). Conversely,  
16 the Court concludes that it is unnecessary to maintain the Government's response (Dkt. No. 42)  
17 under seal. The Clerk is DIRECTED to maintain Docket Number 42-1 under seal during the  
18 pendency of this case. The Clerk is further DIRECTED to unseal Docket Number 42.

19 **III. CONCLUSION**

20 For the foregoing reasons, Defendant's motion to suppress (Dkt. No. 32) is DENIED and  
21 the Government's motion to seal (Dkt. No. 41) is GRANTED in part and DENIED in part.

22 DATED this 15th day of May 2018.

23  
24   
25  
26

John C. Coughenour  
UNITED STATES DISTRICT JUDGE